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SUPREME COURT  
STATE OF WASHINGTON

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BY C. J. MERRITT

NO.

(King County Superior Court No. ~~04-2-33414-4~~ SEA)  
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**SUPREME COURT OF THE STATE OF WASHINGTON**

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DANIEL MADISON, BEVERLY DUBOIS, and DANNIELLE  
GARNER,

Respondents,

v.

STATE OF WASHINGTON, CHRISTINE O. GREGOIRE, Governor,  
and SAM REED, Secretary of State, in their official capacities,

Appellants.

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**MOTION FOR STAY PENDING APPEAL  
AND EXPEDITED HEARING**

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## **I. PARTY FILING MOTION**

This motion is filed by the Appellants (Defendants below), State of Washington, Christine O. Gregoire, Governor, and Sam Reed, Secretary of State.

## **II. RELIEF SOUGHT**

Appellants request a stay of the trial court's decision pending resolution of this appeal. Pursuant to CR 62(a), "Upon the filing of a notice of appeal, enforcement of judgment is stayed until the expiration of 14 days after entry of judgment." The trial court order was entered April 21, 2006. Appellants therefore respectfully request a hearing on this motion, and entry of stay, on or before May 5, 2006, or alternatively, entry of a temporary stay until such date as the Court may rule upon this motion.

Since statehood, the Washington Constitution has provided that the right to vote does not extend to convicted felons whose civil rights have not been restored. Wash. Const. art. VI, § 3.<sup>1</sup> State law also provides that a certificate of discharge, the issuance of which restores civil rights, cannot be issued until the convicted felon has completed "all requirements of the sentence, including any and all legal financial obligations". RCW 9.94A.637(1)(a). "Legal financial obligations" are imposed as part of a

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<sup>1</sup> Article VI, section 3 provides in relevant part: "All persons convicted of infamous crime unless restored to their civil rights . . . are excluded from the elective franchise."

felon's sentence, to sanction the felon and to rectify harms and costs caused by the felon's commission of a crime. They include *inter alia*, fines, restitution, crime victims' compensation fees, and costs of public defense.<sup>2</sup>

The superior court concluded that Washington's disenfranchisement of felons until completion of all of the terms of their sentences, including payment of legal financial obligations, violates equal protection under the federal constitution and its state constitutional counterpart, the privileges and immunities clause of article I, section 12. The trial court concluded that Washington's law impermissibly denies convicted felons the right to vote based solely on "the ability to pay money". Mem. Decision at 11.<sup>3</sup>

Appellants respectfully request that this Court stay the superior court decision pending final resolution of this appeal. Washington's

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<sup>2</sup> Under RCW 9.94A.030(28) "Legal financial obligation" means "a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430."

<sup>3</sup> This motion is filed before the record on appeal is assembled. A copy of the Notice of Appeal, to which the trial court's Order and Memorandum Decision are attached, is appended to this Motion.

longstanding constitutional and legislative decision to exclude felons from the elective franchise until completion of their sentences in full, should not be overturned, and the orderly administration of Washington's election system should not be unnecessarily disrupted based on the determination of a single superior court judge. Rather, the status quo should be maintained pending the final outcome of this appeal.

### **III. RECORD RELEVANT TO MOTION**

The Notice of Appeal, to which the superior court's Order Granting Summary Judgment and Memorandum Decision are attached, is appended to this Motion.

### **IV. GROUNDS FOR RELIEF**

#### **A. Standards For Granting A Stay**

A stay should be granted pending appeal where the issue presented on appeal is debatable and where the stay is "necessary to preserve for the movant the fruits of a successful appeal, considering the equities of the situation." *Purser v. Rahm*, 104 Wn.2d 159, 177, 702 P.2d 1196 (1985). The Court "will (i) consider whether the moving party can demonstrate that debatable issues are presented on appeal and (ii) compare the injury that would be suffered by the moving party if a stay were not imposed with the injury that would be suffered by the nonmoving party if a stay were imposed." RAP 8.1(b)(3).

The courts apply these factors using a sliding scale approach, balancing the two factors. *Boeing Co. v. Sierracin Corp.*, 43 Wn. App. 288, 291, 716 P.2d 956 (1986). So, for example, “if the harm is so great that the fruits of a successful appeal would be totally destroyed pending its resolution, relief should be granted, unless the appeal is totally devoid of merit.” *Id.* By the same token, a showing of debatable issues on appeal does not require the moving party to demonstrate ultimate success on the merits of the appeal, but simply that the issue is a debatable one. *Kennett v. Levine*, 49 Wn.2d 605, 607, 304 P.2d 682 (1956).

**B. This Appeal Well Satisfies The Standards For Granting A Stay**

**1. The Issue Presented By This Appeal Plainly Is Debatable**

The Washington State Constitution explicitly denies the right to vote to convicted felons whose civil rights have not been restored. Wash. Const. art. VI, § 3. The Fourteenth Amendment to the United States Constitution permits such a denial. U.S. Const. amend. XIV, § 2; *Richardson v. Ramirez*, 418 U.S. 24, 43, 94 S. Ct. 2655, 41 L. Ed. 2d 551 (1974) (disenfranchisement of convicted felons who have completed sentences and paroles but have not had civil rights restored does not violate equal protection).

The Legislature has established that civil rights are to be restored upon the issuance of a certificate of discharge by the sentencing court (RCW 9.94A.637(4)), or by pardon by the Governor. RCW 9.96.010. State law further provides that a convicted felon is eligible to receive a certificate of discharge upon completion of “all requirements of the sentence, including any and all legal financial obligations”. RCW 9.94A.637(1)(a).

Plaintiffs argued below that disenfranchisement of felons who have not completed their sentences violates the federal Constitution’s Equal Protection Clause (U.S. Const. amend. XIV, § 1) and the state constitution’s Privileges and Immunities Clause (Wash. Const. art. I, § 12), when the remaining sentence term to be completed is payment of legal financial obligations.<sup>4</sup> The trial court concluded (correctly) that convicted felons do not enjoy a fundamental right to vote and, thus, the proper standard to apply to Plaintiffs’ claims was whether any rational basis exists for the legislative choice that felon voting rights not be restored until the felon completes all of the terms of his or her sentence. Mem. Decision at 8. The trial court then concluded (incorrectly) that there is no rational basis for this legislative policy choice.

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<sup>4</sup> The trial court did not separately analyze the Plaintiffs’ claims under article 1, section 12, concluding that the reach of the state Privileges and Immunities Clause is at least as broad as the federal Equal Protection Clause.

The Legislature's implementation of article VI, section 3 of the Washington Constitution by requiring that convicted felons fully satisfy all of the terms of their sentences in order to be restored to their civil rights, hardly can amount to a violation of the federal Equal Protection Clause or the state Privileges and Immunities Clause in light of several points. First, it is a constitutional given that, absent completion of sentence and attendant restoration of civil rights, a state may deny felons the franchise. Convicted felons enjoy no constitutionally protected right to vote. U.S. Const. amend. XIV, § 2; *Richardson*, 418 U.S. at 43; Wash. Const. art. VI, § 3. Completion of sentence and attendant restoration of rights is precisely the classification (and the only classification) drawn in Washington's law: Felons who have completed all of the terms of their sentences are eligible for restoration of civil rights, including exercise of the elective franchise; those who have not completed their sentences are not eligible.

Second, it is rational to require persons who have violated the laws of society that proscribe felonies to pay their "debt to society", in full, before being allowed to participate in the political process by which those laws are enacted. See *Green v. Bd. of Elections*, 380 F.2d 445, 451 (2d Cir. 1967), *cert. denied*, 389 U.S. 1048 (1968) (a person who makes the conscious decision to break the law can be fairly regarded as having

abandoned the right to further participate in making the law, or in electing officials who do so). The simple fact that criminal sentences include several different types of sanctions – not only imprisonment, but also fines, restitution and other monetary obligations – does not render it irrational to condition restoration of civil rights on fulfillment of those sentence terms. The harm caused by felons to crime victims, and to society generally, often includes harm that cannot be addressed through means other than financial sanctions, inadequate though such sanctions often are. The Legislature acts reasonably when it decides that all such sentence terms must be satisfied in order for the convicted felon to be discharged.

Third, Washington's law does not draw a wealth-based classification as the trial court concluded. It distinguishes only between persons who have completed all of the terms of their sentences and those who have not. But even if Washington law drew a "wealth-based" classification, legal financial obligations are not akin to an impermissible poll tax, as the trial court suggested. Mem. Decision at 11. Legal financial obligations are part of a criminal sentence. They result directly from the convicted felon's criminal act and, in many instances, the size of the monetary sanction is directly related to the nature and extent of the criminal conduct in which the felon decided to engage; their payment is

part of a sanction imposed on the felon as a result of his or her choice to commit a felony.

For each of these reasons, the trial court's invalidation of Washington's long-established requirement that convicted felons satisfy all terms of their felony sentences, including payment of legal financial obligations, prior to restoration of their civil rights, presents more than merely a "debatable" issue. RAP 8.1(b)(3). It is highly dubious. Such a revision to basic tenets of the democratic process should not take effect, even temporarily, based on the decision of any single judge.

**2. The Equities Support A Stay And A Stay Is Appropriate To Avoid Substantial And Potentially Needless Disruption Of Washington's Electoral System**

Absent a stay, it is reasonable to expect that during the time this case is pending on appeal otherwise ineligible felons will register to vote based on the trial court's decision, and many will in fact vote in upcoming elections, such as the September 2006 primary and November 2006 statewide general election. The ballot for that election can be expected to include any number of significant races, including an election for United States Senator, all nine of Washington's Representatives in Congress, the entire state House of Representatives, approximately half of the state

senate, and numerous judicial offices.<sup>5</sup> In addition, one proposed amendment to the state constitution is scheduled to appear, along with such initiatives and referendums that qualify through the petition process and any number of local offices.

Absent a stay, the State of Washington will be denied the fruits of a successful appeal. Legally qualified voters will have their votes diluted by voters who ultimately prove to be ineligible; and it is not outside the realm of possibility that such votes could determine the outcome of some close races or issues. The denial of a stay would therefore effectively deny the State and its eligible voters the fruits of a successful appeal in this action. Although a somewhat similar claim of harm could be asserted by felons rendered eligible to vote by the trial court's ruling, if it is affirmed on appeal, it should be recalled that felons have no fundamental right to the franchise. *Richardson*, 418 U.S. at 43. Moreover, this appeal in all likelihood will be resolved finally before the next succeeding election and, therefore, delay in the franchise will be limited.

Washington law has long recognized that convicted felons are ineligible to vote until they have received a certificate of discharge by fully complying with all of the terms of their felony sentences. If this

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<sup>5</sup> A full list of federal and state (but not local) offices subject to election in 2006 can be found at the Secretary of State's Web site: <http://www.secstate.wa.gov/elections/>.

Court ultimately reverses the trial court's decision, then, in the absence of a stay, an unknown number of ineligible voters may cast ballots in the meantime. The harm to the remaining voters, whose valid ballots are diluted by the ballots of ineligible felons, would be irreparable.

The trial court's conclusion that convicted felons should be permitted to vote despite their failure to fully satisfy the terms of their sentences works a major revision to state law on an important point of public policy. Such policy decisions are ordinarily vested in the legislative branch (or in the people through initiative or referendum).

Absent a stay, the superior court's decision would substantially change the rules governing eligibility to vote. In order to fully implement such a change, a substantial investment of resources would be necessary, which would prove unnecessary in the event of an appellate decision reversing that judgment.

The Secretary of State's Office maintains a statewide voter registration database, which serves as the official voter registration list for all elections. RCW 29A.08.651(9). State law requires that the Secretary arrange with other state agencies to compare the voter registration database with other state databases on at least a quarterly basis to identify known felons who are registered to vote, and to take steps to cancel their registrations. RCW 29A.08.520.

Existing state databases do not identify convicted felons who have only the payment of legal financial obligations remaining to satisfy all the terms of their criminal sentences. Decl. Pamela Floyd in Support of Motion for Stay Pending Appeal, ¶ 3. Neither do they identify those “who due to their financial status are unable to pay their legal financial obligations.” Order Granting Pls.’ Mot. for Summ. J. at 2. Prior to the trial court’s ruling, there was no need or reason to collect such data. Floyd Decl., ¶ 3. In order to use the type of database comparison mandated by RCW 29A.08.520 to identify those convicted felons whose registrations should be cancelled, consistent with the changed eligibility requirements envisioned by the superior court’s ruling, new data collection mechanisms, criteria to determine financial status, and databases would have to be developed. Floyd Decl., ¶ 4. Such efforts would be necessary in order to assure that only those felons authorized to vote by the trial court ruling would be allowed to maintain their voter registrations. Floyd Decl., ¶ 4. Such a task would entail considerable time, effort and cost, which would ultimately serve no purpose in the event that this Court reverses the trial court decision. Floyd Decl., ¶ 4. Absent a stay pending the ultimate determination of this matter, that effort may be undertaken for no reason.

**3. Hearing On This Motion Should Be Expedited**

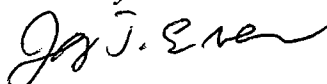
Absent a stay, the trial court's order becomes effective 14 days after entry. CR 62(a). Those 14 days will elapse on May 5, 2006. It can reasonably be anticipated that once this occurs individuals will begin registering to vote under the authority of that order. An expedited hearing on this Motion may therefore be necessary in order to prevent a situation in which an unknown number of voters register inappropriately. Appellants therefore respectfully request that this Court either hear and act upon this Motion prior to May 5 or, alternatively, that the Court enter an order temporarily staying the trial court's decision pending hearing.

**V. CONCLUSION**

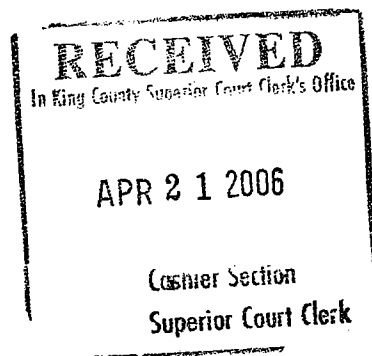
For the foregoing reasons, this Court should grant Appellants' Motion for Stay Pending Appeal and order that the superior court's judgment be stayed pending the final resolution of this case on appeal.

RESPECTFULLY SUBMITTED this 21<sup>st</sup> day of April, 2006.

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STATE OF WASHINGTON  
KING COUNTY SUPERIOR COURT

DANIEL MADISON, BEVERLY  
DUBOIS, and DANNIELLE  
GARNER,

Plaintiffs,

v.

STATE OF WASHINGTON,  
CHRISTINE O. GREGOIRE,  
Governor, and SAM REED, Secretary  
of State, in their official capacities,

Defendants.

NO. 04-2-33414-4SEA

NOTICE OF APPEAL TO  
WASHINGTON SUPREME COURT

Defendants State of Washington et al. seek direct review by the Washington Supreme Court of the attached Order Granting Plaintiffs' Motion for Summary Judgment (including the Memorandum Decision appended thereto) entered on April 21, 2006.

A copy of the Order is attached to this notice.

Counsel for the Plaintiffs in this action are:

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5 DATED this 21<sup>st</sup> day of April, 2006.

6 ROB MCKENNA  
7 Attorney General

8 *J.T. Even*  
9 JEFFREY T. EVEN, WSBA #20367  
10 Deputy Solicitor General  
11 Attorneys for Defendants  
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7 **STATE OF WASHINGTON**  
8 **KING COUNTY SUPERIOR COURT**

9 DANIEL MADISON, SEBRINA  
10 MOORE, LARENCE BOLDEN,  
11 BEVERLY DUBOIS, and  
12 DANNIELLE GARNER,

13 Plaintiffs,

14 v.

15 STATE OF WASHINGTON,  
16 CHRISTINE O. GREGOIRE,  
17 Governor, and SAM REED, Secretary  
18 of State, in their official capacities,

19 Defendants.

NO. 04-2-33414-4SEA

[Proposed]

ORDER GRANTING PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT

20 This matter came on for hearing on February 3, 2006, before this Court on  
21 (i) Plaintiffs' Motion for Summary Judgment, and (ii) Defendants' Cross-Motion for  
22 Summary Judgment. In considering these motions, the Court heard oral argument and  
23 reviewed the following documents:

- 24 1. Plaintiffs' Motion for Summary Judgment;
- 25 2. Declaration of Peter A. Danelo in Support of Plaintiffs' Motion for Summary  
26 Judgment;
3. Declaration of Daniel Madison in Support of Plaintiffs' Motion for Summary  
Judgment;

4. Declaration of Beverly DuBois in Support of Plaintiffs' Motion for Summary Judgment;
5. Declaration of Dannielle Garner in Support of Plaintiffs' Motion for Summary Judgment;
6. Defendants' Cross-Motion for Summary Judgment and Response To Plaintiffs' Motion for Summary Judgment;
7. Declaration of Jeffery T. Even in Support of Defendants' Cross-Motion for Summary Judgment;
8. Plaintiffs' Reply in Support of Their Motion for Summary Judgment and Opposition to Defendants' Cross Motion;
9. Defendants' Reply Memorandum in Support of Summary Judgment;
10. The other papers and pleadings on file in this action.

Based on the argument of counsel, the evidence presented, and the Court's Memorandum Decision dated March 27, 2006, (a copy of which is attached hereto and incorporated herein by this reference) the Court finds and concludes:

1. No genuine issue of material fact exists regarding Plaintiffs' Motion and Defendants' Cross-Motion.

2. Plaintiffs are entitled to judgment as a matter of law.

Based on the above findings IT IS ORDERED:

1. Plaintiffs' Motion for Summary Judgment is hereby GRANTED.

2. Defendants' Cross-Motion for Summary Judgment is hereby DENIED.

3. Washington's law governing disenfranchisement of felons following a felony conviction is invalid as to all felons who have satisfied the terms of their sentences except for <sup>due to their financial status,</sup> paying legal financial obligations, and who are unable to pay their legal financial obligations immediately, ~~due to indigency,~~ and

4. Plaintiffs Daniel Madison, Beverly DuBois, and Dannielle Garner are entitled to register to vote and are eligible to sign the oath required by RCW 29A.08.230.

DATED this 21 day of April, 2006.

Judge Michael Spearman

**Presented by:**

**ROB MCKENNA**  
Attorney General

Jeffrey T. Even, WSBA # 20367  
Deputy Solicitor General  
Attorneys for Defendants

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**SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF KING**

**DANIEL MADISON, BEVERLY DUBOIS, and  
DANNIELLE GARNER,**

**Plaintiffs,**

**v.**

**STATE OF WASHINGTON, CHRISTINE O.  
GREGOIRE, Governor, and SAM REED,  
Secretary of State, in their official capacities,**

**Defendants.**

**NO. 04-2-33414-4 SEA**

**MEMORANDUM DECISION**

**INTRODUCTION**

Article VI, Section 3 of the Washington State Constitution provides that the right to vote does not extend to those “convicted of infamous crimes unless restored to their civil rights.” The Washington Legislature has defined “infamous crime” to mean any offense “punishable by death...or confinement in a state correctional facility” or, in other words, any felony offense. RCW 29A.04.079. The Legislature has also provided that a felon’s civil rights, including the right to vote, may be restored by a governor’s pardon or upon the issuance of a certificate of discharge (RCW 9.96.010 and RCW 9.94A.637(4) respectively). The latter may only issue when the felon

has completed "all requirements of the sentence, including any and all legal financial obligations." RCW 9.94A.637(1)(a).

Plaintiffs Daniel Madison, Beverly DuBois and Dannielle Garner have filed this action for declaratory relief against the State of Washington, the Secretary of State, Sam Reed and Governor Christine Gregoire. They ask the court to find that above-described method of restoring a felon's right to vote is unconstitutional because it conditions re-enfranchisement on the payment of legal financial obligations (LFOs). They contend that the statute impermissibly discriminates among citizens, specifically among those convicted of felony offenses, on the basis of wealth. They allege that the statute violates the Equal Protection Clause of the Fourteenth Amendment to the Federal Constitution and Article I, Sections 12 and 19 of the Washington State Constitution.<sup>1</sup>

This matter is before the court on the parties' cross motions for summary judgment. The plaintiffs ask that a judgment be entered granting the requested relief, while the defendants ask for judgment dismissing plaintiffs' complaint. Summary judgment is appropriate where the record reveals no genuine dispute as to any issue of material fact and the moving

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<sup>1</sup> Article I, Section 12 provides: No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations. Section 19 provides: All Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

party is entitled to judgment as a matter of law. *Brower v. State*, 137 Wn.2d 44, 52 (1998). Since neither party disputes any material fact and both motions raise only questions of law, summary judgment is appropriate in this case.

The undisputed facts are as follows. Plaintiffs are three individuals who have been convicted of felony offenses in the State of Washington. Pursuant to the judgment and sentence entered in each case, each plaintiff was required to serve a period of confinement and to satisfy a number of other conditions, including the payment of LFOs. Each plaintiff has satisfactorily completed all of the terms and conditions of their respective sentences except for payment of the LFOs. Each plaintiff is currently making regular monthly payments towards their LFOs. However, because each is indigent, none is able to pay more than \$10 - \$20 per month. Accordingly, it will likely take years before each plaintiff will be able to complete the payments. Until the payments are completed the plaintiffs are unable to take the oath required for voter registration pursuant to RCW 29A.08.230 and thus each is unable to lawfully register to vote or cast a ballot.

## DISCUSSION

Remarkably little is said in the Federal Constitution regarding the right to vote. It is mentioned almost in passing in Article I, Sections 2 and 4.<sup>2</sup> Yet, the right to vote has long been recognized as fundamental in a democratic society. *Reynolds v. Sims*, 377 U.S. 533, 561-562 (1964) ("Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society."). The right to exercise the franchise has been acknowledged as the right by which all other rights are preserved. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) ("[T]he political franchise of voting is...regarded as a fundamental political right, because preservative of all rights.").

On the other hand, the Washington State Constitution directly and explicitly guarantees the citizens of this state the right to vote in free and equal elections. Thus, not only has the right to vote has been held to be a fundamental right under our own state constitution. *Malim v. Benthien*, 114 Wash. 533 (1921), it has been held that our Constitution goes further to safeguard the right to vote than does the Federal Constitution. *Foster v. Irrigation District*, 102 Wn.2d 395, 404 (1984).

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<sup>2</sup> In Article I, Section 2 it states in part: The house of representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.... Section 4 states in part: The times, places and manner of holding elections for senators and representatives, shall be prescribed in each state by the legislature thereof; but congress may at any time by law make or alter such regulations, except as to the places of choosing senators....

Accordingly, in the instant matter there is no dispute that the right to vote is protected by the Equal Protection Clause of 14<sup>th</sup> Amendment to the Federal Constitution and by Article I, Section 12 of the Washington State Constitution, the Privileges and Immunities Clause. And because the right to vote is a fundamental one, it may not be denied or otherwise restricted unless the state can show that the denial or restriction furthers a compelling state interest. *Kramer v. Union Free School Dist.*, 395 U.S. 621, 626 (1969); *Seattle v. State*, 103 Wn.2d 663, 670 (1985).

Nor is it disputed that the state may, consistent with the 14<sup>th</sup> Amendment, deny the right to vote to persons who have been convicted of felony offenses. *Richardson v. Ramirez*, 418 U.S. 24 (1974); *Fernandez v. Kiner*, 36 Wn.App. 210 (1983). In *Richardson*, three felons who had completed the terms and conditions of their sentences were refused registration to vote in three California counties. They sued the election officials, claiming, among other things, that the refusal to allow them to register violated the Equal Protection Clause of the 14<sup>th</sup> Amendment. The California Supreme Court agreed. It found that the state was unable to demonstrate a compelling interest in denying plaintiffs' the fundamental right to vote. However, on appeal, to the United State Supreme Court, the decision was reversed.

The *Richardson* Court observed that while it had never considered the precise question of whether a state may constitutionally exclude some or all convicted felons from the franchise, it had indicated approval of such exclusions on a number of occasions. As an example the Court cited *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45, 53 (1959), where it held that:

Residence requirements, age, previous criminal record are obvious examples indicating factors which a State may take into consideration in determining qualifications of voters. (citations omitted).

Thus, when confronted directly with the issue of whether a state could constitutionally deny all felons the right to vote, the *Richardson* Court easily found that Section 1 of the 14<sup>th</sup> Amendment could not have intended to prohibit felon disenfranchisement when the Section 2 of the 14<sup>th</sup> Amendment expressly approved denial of the franchise to persons who had participated in "rebellion, or other crime."

Some federal courts have interpreted *Richardson* to mean that once a person loses the right to vote by virtue of a felony conviction, then that person no longer has a fundamental interest in the right to vote. *Baker v. Cuomo*, 58 F.3d 814 (2<sup>nd</sup> Cir. 1995); *Owens v. Barnes*, 711 F.2d 25 (3<sup>rd</sup> Cir. 1983), cert. den. 464 U.S. 963 (1983). In *Baker* and *Owens*, the respective courts considered similar New York and Pennsylvania statutes. Each statute

provided that non-incarcerated felons had the right to vote, while the right was denied to incarcerated felons. At issue was whether this state created distinction, as it applied to the right to vote, violated the Equal Protection Clause. Each court held that the Equal Protection Clause was applicable, but because a felon had no fundamental interest in the right to vote, the state need not establish that the distinction was necessary to further a compelling state interest. The discrimination was lawful so long it was supported by some rational reason.

Plaintiffs claim that they do not take issue with the holding in *Richardson*. They argue, however, that Washington has not simply taken the lawful step of disenfranchising felons, it has taken the further step of creating a process by which felons can regain the right to vote. Plaintiffs contend that when the state engages in this process of re-enfranchising or re-distributing the vote it must be done in a manner consistent with the 14<sup>th</sup> Amendment and Article I, Section 12. In other words, any restriction on the re-distributed right must be in furtherance of a compelling state interest. Since none has been shown, plaintiffs argue, it is unconstitutional to deny them the right to vote.

In support of this argument, plaintiffs rely on a host of cases such as *Dunn v. Blumstein*, 405 U.S. 330 (1972), *Kramer*, *supra*, and *Harper v. Va.*

*State Bd. of Elections*, 383 U.S. 663 (1966), which stand for the proposition that "if a challenged state statute grants the right to vote to some bona fide residents of requisite age and citizenship and denies the franchise to others, the Court must determine whether the exclusions are necessary to promote a compelling state interest." *Kramer*, supra at 627. However, these cases are pre-*Richardson* and do not take into account the holdings in *Baker* and *Owens* that felons have no fundamental interest in the right to vote. In order for the plaintiffs' argument to have merit, the court would have to conclude that the state, by creating a re-enfranchisement process, has resurrected plaintiffs' fundamental interest in the right to vote. No case has been cited in support of such a conclusion.

Accordingly, the court concludes that while the Equal Protection Clause applies to plaintiffs' claim, the proper analysis is to determine whether there exists any rational basis for the state to deny them the right to vote, while granting that right to others who have been convicted of felony offenses.

For purposes of this analysis, the state contends that the relevant distinction to be considered is between felons who have completed the conditions of their sentence and those who have not. It is rational, the state argues, to continue the disenfranchisement of those felons who have not

completed all the terms and conditions of their sentences since the failure to do so proves them unwilling to abide by the laws that result from the electoral process. In addition, it is rational for the legislature to require, as a matter of policy, that all conditions of a sentence be completed before a felon regains the right to vote, instead of distinguishing among particular elements of a felony sentence.

However, the distinction the state would have the court address and its purported rationale do not address the argument raised by plaintiffs. At issue is not the broad question of whether the state may properly distinguish between those who have completed all sentence conditions and those who have not. But rather, the narrower question of whether there is a rational justification for the state to grant the right to vote to felons who are able to pay their LFOs immediately, while denying the right to those, such as plaintiffs, who, by reason of indigency, require a period of time to pay them. *Cf. United States v. Parks*, 89 F.3d 570, 573 n.5 (9<sup>th</sup> Cir. 1996). On this issue, the relationship between the reasons given and the state's asserted goals is difficult to discern.

The state offers no explanation for its assertion of a rational relationship between the ability to pay one's LFOs immediately and a willingness to abide by the law. There is no logic in the assumption that a

person in possession of sufficient resources to pay the obligation immediately is the more law-abiding citizen, indeed, the better example of respect for our justice system may very well be the indigent who manages for years to make monthly payments toward the obligation. Nor has the state explained how denying the right to vote is rationally related to state's interest in collecting on the LFOs. Denying plaintiffs the right to vote does not enhance their ability to pay any more quickly than the monthly payments they are already making. Even in the absence of heightened scrutiny, it is well settled that "[t]he State may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432, 446 (1985).<sup>3</sup>

Moreover, discrimination on the basis of wealth and property has long been disfavored. *Edwards v. People of State of California*, 314 U.S. 160 (1941), *Griffin v. Illinois*, 351 U.S. 12 (1956), *Douglas v. People of State of California*, 372 U.S. 353 (1963). It is well recognized that there is simply

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<sup>3</sup> It is of some significance that in the instant matter the sole apparent distinction between felons who have had their voting rights restored and those who have not is simply whether they have paid their LFOs. In all other respects, the effect of their felony criminal history remains identical. Moreover, obtaining a certificate of discharge in no way implies that an offender has been rehabilitated or is otherwise better able to participate in the electoral process. RCW 9.94A.637(4) provides in pertinent part:

...the discharge shall have the effect of restoring all civil rights lost by operation of law upon conviction, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

no rational relationship between the ability to pay and the exercise of constitutional rights. (See *Zablocki v. Redhail*, 434 U.S. 374 (1978), "...a persons ability to pay money demanded by the State does not justify the total deprivation of a constitutionally protected liberty." Steward, J. concurring.)

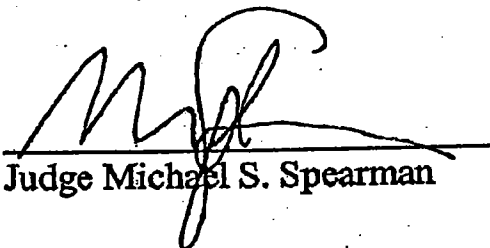
In *Griffin*, supra, for example, the court explained that the state could not condition the right to appeal a criminal conviction on the defendant's ability to pay for a trial transcript because there was no rational relationship between the ability to pay for the transcript and a defendant's guilt or innocence. In the area of voting rights, the lack of a rational relationship between wealth and one's ability to intelligently participate in the electoral process is well-established. In *Harper*, supra at 668, the Court observed that "[t]o introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor."

Thus, the court concludes that the state has not shown a rational relationship between a felon's ability to immediately pay LFOs and a denial of the right to vote. Accordingly, the Washington re-enfranchisement scheme which denies the right to vote to one group of felons, while granting that right to another, where the sole distinction between the two groups is the ability to pay money, violates the Equal Protection Clause of the 14<sup>th</sup>

Amendment to the U.S. Constitution and Article I, Sections 12 and 19 of the Washington State Constitution and is constitutionally impermissible.<sup>4</sup>

Plaintiffs' motion for summary judgment is granted. Plaintiffs are entitled to register to vote and are eligible to sign the oath required by RCW 29A.08.230.<sup>5</sup> Defendants' motion for summary judgment is denied.

Dated this 27<sup>th</sup> day of March, 2006.

  
Judge Michael S. Spearman

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<sup>4</sup> The court declines plaintiffs' invitation to examine their claims under the Privileges and Immunities Clause of the Washington State Constitution separate from an analysis under the Federal Equal Protection Clause.

<sup>5</sup> Pursuant to RCW 29A.08.651 the Secretary of State is required to maintain a statewide voter registration data base which contains the name of every legally registered voter in the state. The secretary of state must review and update the records of all registered voters on the list on a quarterly basis to make additions and corrections. Because today's decision will require the secretary to examine and review a number of different data bases and because only four days remain in the first quarter, it is unrealistic to expect the secretary of state to incorporate the effects of today's ruling until the 2006 second quarter review.